IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.W.P. Nos: 906, 907, 901, 898 and 899 Of 2005

Judgment reserved on :13.3.2007

Date of decision: 9.4.2007

The Palampur Cooperative Marketing and Consumer Federation Limited

Petitioner

Versus

State of H.P. and others **Respondents**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting?[1]

Mr. Ajay Sharma, counsel for the petitioner.

Mr.M.S.Chandel, Advocate General, with Mr.R.M.Bisht, DAG, for the State.

Mr.Haminder Chandel, counsel for respondent No. 2.

Per Deepak Gupta, J.

The following interesting question of law arises in these writ petitions.

> "Whether the employees of a cooperative society who are governed by the provisions of H.P. Cooperative Societies Act and the rules framed

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

thereunder can claim the benefit of the provisions of the Industrial Disputes Act ?"

The facts necessary for decision of the petitions and which are not in dispute are that the petitioner society in all cases is a society registered under the H.P. Cooperative Societies Act, (hereinafter referred to as the Act). The society was engaged in the business of sale of food grains on behalf of the government and was admittedly getting commission on the said sale. The society had engaged the respondent workmen, (hereinafter referred to as the workmen) as employees in the society.

The workman in CWP No. 898 of 2005 was engaged as a driver on 15.7.1998 on daily wages. The services of the workman were dispensed with on 31.10.2000. The workman in CWP No. 899 of 2005 was engaged as a part time chowkidar on daily wages on 12.9.1998 and his services were dispensed with on 31.10.2000. The workman in CWP No. 901 of 2005 was engaged as a conductor/chowkidar on daily wages on 29.8.1995 and his services were dispensed with on 31.10.2000. The workman in CWP No. 906 of 2005 was engaged as a conductor in August, 1990 on daily wages. His services were regularized in the year 1993. The

workman in CWP No. 907 of 2005 was engaged as a labourer on daily wages on 18.5.1992 and his services were dispensed with on 31.10.2000. It would be pertinent to mention that the letters dated 31.10.2000 sent to the workmen did not assign any reason for terminating the services of the workmen. The workmen made a claim that their services had been terminated in violation of the provisions of the Industrial Disputes Act (for short I.D. Act) and thereafter respondent No. 1 State made references to the Labour Court-cum-Industrial Tribunal, Himachal Pradesh to decide the question whether the termination of the services of the workmen was in violation of Section 25 of the I.D. Act or not.

The learned Presiding Officer of the Labour Court-cum-Industrial Tribunal (for short the tribunal) has decided each of the references separately. The tribunal has come to the conclusion that the services the services of the workmen were disengaged without issuing any notice to them as required under Section 25-F of the I.D. Act. According to the society their services were terminated because the State Government took a policy decision to withdraw the work of public distribution of food grains and fertilizers from the society and as such no

work was left with the society. The tribunal came to the conclusion that the termination of the services of the petitioner was illegal and against the provisions of the I.D. Act and, therefore, set aside the order of termination and directed that the workmen be reinstated with all consequential benefits including back wages to the extent of 50%. These orders are under challenge before us.

Mr. Ajay Sharma, learned counsel for the petitioner, has strenuously argued that since the petitioner society is a cooperative society and its employees are governed under the provisions of the H.P. Cooperative Societies Act and the Rules framed thereunder, the provisions of the I.D. Act are not applicable. On the other hand, Mr. Haminder Chandel, learned counsel appearing on behalf of the workmen contends that the petitioner society was engaged in a purely commercial venture and was an industry within the meaning of I.D. Act and the workmen had been engaged for such purpose. He submits that since the workmen were covered by the provisions of the I.D. Act, their services could not have been terminated without following the procedure laid down in Chapter V-A of the Act.

To appreciate the rival contentions of the parties, it would be appropriate to refer to certain provisions of the Cooperative Societies Act. Section 31 of the Act provides that the management of the Cooperative society shall vest in the managing committee. Section 72 of the Act relates to settlement of dispute and relevant portion of the said section reads as follows:-

> "72. Dispute which may be referred to arbitration:- (1) Notwithstanding any thing contained in any law for the time being in force, if any dispute touching the constitution, management, or the business of a co-operative society arises-
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> (a) x x x x x x x x x x x x x x x x x x x
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> (b) x x x x x x x x x x x x x x x x x x x
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> (c) between the society, or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society ;
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> (d) x x x x x x x x x x x x x x x x x x x
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> (e) x x x x x x x x x x x x x x x x x x x
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> Such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute."

Section 73 provides that on a dispute having been raised under Section 72 the Registrar may decide the same himself or may assign it to some other person for decision. Section 75 provides that the award of the Arbitrator or a decision of the Registrar made under Section 73 shall not be questioned in any civil or revenue court.

Section 92 of the Act reads as follows:-

> "92. Bar of jurisdiction of courts: (1) Save as provided in this Act, no civil or revenue court shall have any jurisdiction in respect of,-
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> (a) the removal of a committee ;
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> (b) any dispute required under section 72 to be referred to the Registrar; and
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> (c) any matter concerning the winding up and the dissolution of a society,
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> (2) While a co-operative society is being wound up, no suit or other legal proceedings relating to the business of such society shall be proceeded with or instituted against the liquidator as such, or against the society or any member thereof, except by leave of the Registrar and subject to such terms as he may impose.
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> (3) Save as provided in this Act, no order, decision or award made under this Act shall be questioned in any court on any ground whatsoever."

Section 93 makes provision for an appeal against any decision or award made under Section 73. The State Government has been vested with the powers of review and revision under Section 94.

The H.P. Cooperative Societies Rules 1971, hereinafter referred to as the rules, have been framed under the rule making power vested in the State Government under Section 109 of the Act. This includes the power to make rules providing for the qualification of employees of societies. Rule 9 provides that a society shall make byelaws in respect of various matters and one of the matters provided for is the appointment, suspension, removal of the officers of the society. Under Rule 49 1(d) the Managing Committee of the society is empowered to appoint salaried or non salaried officers for the conduct of the business of the society in accordance with the provisions of the rules and the byelaws. Rule 56 specifically relates to the officers and the officials of the society and reads as follows:-

> “56. Officers and employees of Co-operative Societies-(1) Notwithstanding anything contained in the bye-laws of a society, no Co-operative Society shall appoint any person as its paid officer or employee in any category of service unless he possesses the qualifications and furnishes the

security, if so specified by the Registrar, from time to time, for such category of service in the society, or for the class of society to which it belongs. The conditions of service of the employees of the societies shall be specified by the Registrar.

(2) No Co-operative Society shall retain in service any paid officer or employees, if he does not acquire the qualifications or furnish the security as is referred to in sub-rule (1) within such time as the Registrar may direct.

(3) No Co-operative society shall employ a salaried officer or servant with total monthly emoluments exceeding rupees `one thousand' without the previous permission of the Registrar. The promotion of an employee to a higher post shall be deemed to be an appointment under this sub-rule.

(4) The Registrar may for special reasons to be recorded in writing relax in respect of any paid officer or employee, the provisions of this rule in regard to the qualifications he should possess or the security he should furnish.

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On the basis of the aforesaid provisions contained in the Act and the Rules, Mr. Ajay Sharma, learned counsel for the petitioner contends that the Cooperative Societies Act and the Rules framed there under are a complete code in itself and they specifically

bar the jurisdiction of all other Acts and laws and as such the workman can only raise a dispute under the provisions of Section 72 of the Act and cannot raise an industrial dispute within the meaning of I.D. Act.

On the other hand, Mr. Haminder Chandel, Advocate, contends that the provisions of the I.D. Act have not been specifically or impliedly excluded. He further submits that the I.D. Act is a Central Act and in case there is repugnancy between the two Acts, the provisions of Central Act must prevail. It is also contended that section 25-J of the I.D. Act specifically provides that the provisions of Chapter V-A which relates to lay off retrenchment shall have effect notwithstanding anything inconsistent therewith containing in any other law. Section 25-J of the I.D. Act reads as follows:-

> "25-J.Effect of laws inconsistent with this Chapter.- (1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law [including standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946)]:
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> [Provided that where under the provisions of any other Act or rules, orders or notifications issued thereunder or under any standing orders or under any award, contract or service or otherwise, a workman is entitled to benefits in respect of any

matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.]

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State insofar as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen insofar as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter."

In **The Sawtram Ramprasad Mills Co. Ltd. Akola Vs. Baliram Ukandaji and another AIR 1966 SC 616** a Constitution Bench of the apex court dealt with the question as to whether the I.D. Act, 1947 (Central Act) or the C.P. and Berar Act Industrial Disputes (Settlement Act), 1947 would apply. The apex court held as follows:-

"4. x x x x x x x x x x x x x x x x x x x x Chapter 5-A is the only Chapter in which there is provision regarding lay off or compensation for lay off. The C.P. and Berar Act contains no provision either for the recovery of money or for compensation for lay off. It is thus obvious that if a

> workman has a claim for lay off it can only come up for decision under the Industrial Disputes Act, 1947 and, indeed, S. 25-J (2) says so in express terms. The attempt to keep out the provisions of the Industrial Disputes Act, particularly Chapter V-A and S. 33-C must, therefore, fail. The next attempt, namely that the C.P. and Berar Act applies is also ineffective."

The court further went on to hold that in view of Section 25-J any dispute relating to lay off or retrenchment would have to be decided only in terms of the provisions of I.D. Act.

The apex court in **Krishna District Co-operative Marketing Society Limited, Vijayawada Vs. N.V.Purnachandra Rao and others (1987) 4 SCC 99** again dealt with a similar question. The question before the Supreme Court was whether an employer whose establishment is covered under the Andhra Pradesh Shops and Establishment Act, 1966 is required while retrenching any worker to comply with the provisions of Section 25 of the I.D. Act. The apex court after considering the entire law held as follows:-

> "10. The result of the above discussion is that if the employees are `workmen' and the management is an `industry' as defined in the Central Act and the

> action taken by the management amounts to `retrenchment' then the rights and liabilities of the parties are governed by the provisions of Chapter V-A of the Central Act and the said rights and liabilities may be adjudicated upon and enforced in proceedings before the authorities under Section 41(1) and Section 41(3) of the State Act."

The apex court in **The Co-operative Central Bank Ltd. and others Vs. The Additional Industrial Tribunal, Andhra Pradesh and others 1969 (2) SCC 43** dealt with the similar question. The question before the apex court was whether a dispute relating to the change in the service condition of an employee of a Co operative Society could be dealt with by the authorities under the Co operative Societies Act being a dispute touching upon the business and management of the society or whether it could only be decided under the provisions of the I.D. Act. The apex court held as follows:-

> "7. Applying these tests, we have no doubt at all that the dispute covered by the first issue referred to the Industrial Tribunal in the present cases could not possibly by referred for decision to the Registrar undere Section 61 of the Act. The dispute related to alteration of a number of conditions of service of the workmen which relief could only be granted by an Industrial Tribunal dealing with an industrial dispute.

The Registrar, it is clear from the provisions of the Act, could not possibly have granted the reliefs claimed under this issue because of the limitations placed on his powers in the Act itself. It is true that Section 61 by itself does not contain any clear indication that the Registrar cannot entertain a dispute relating to alteration of conditions of service of the employees of a registered society; but the meaning given to the expression "touching the business of the society", in our opinion, makes it very doubtful whether a dispute in respect of alteration of conditions of service can be held to be covered by this expression. Since the word "business" is equated with the actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects, such as laying down the conditions of service of its employees, can be said to be a part of its business, it would appear that a dispute relating to conditions of service of the workmen employed by the society cannot be held to be a dispute touching the business of the society."

Dealing with the question as to what is the effect of byelaws, the apex court held as follows:-

"10. x x x x x x x x x x x x x x x x x x x

In fact, after such bye-laws laying down the conditions of service are made and any person enters the employment of a society, those conditions of service will have to be treated as conditions accepted by the employee when entering the service and will thus bind him like conditions of service specifically forming part of the contract of service. The bye-laws that can be framed by a society under the Act are similar in nature to the Articles of Association of a Company incorporated under the Companies Act and such articles of Association have never been held to have the force of law. In a number of cases, conditions of service for industries are laid down by Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946, and it has been held that, though such Standing Orders are binding between the employers and the employees of the industry governed by those Standing Orders, they do not have such force of law as to be binding on Industrial Tribunal adjudicating an industrial dispute. The jurisdiction which is granted to Industrial Tribunals by the Industrial Disputes Act is not the jurisdiction of merely administering the existing laws and enforcing existing contracts. Industrial Tribunal have the right even to vary contracts of service between the employer and the employees which jurisdiction can never be exercised by a civil court or a Registrar acting under the Co-operative Societies Act, so that the circumstance that, in granting relief on Issue No.1, the Tribunal will have to vary the

special bye-laws framed by the Co-operative Bank does not lead to the inference that the Tribunal would be incompetent to grant the reliefs sought in this reference. In fact, the reliefs could only be granted by the Industrial Tribunal and could not fall within the scope of the powers of the Registrar dealing with a dispute under Section 61 of the Act."

Reliance has been placed by Mr. Ajay Sharma, learned counsel for the petitioner, on the decision of the apex court in **R.C.Tiwari Vs. M.P.State Co-operative Marketing Federation Ltd. and others (1997) 5 SCC 125**. In this case the apex court while dealing with Section 55 of the M.P.Co-operative Societies Act held that in view of the wide definition in Section 55, a dispute relating to the services of an employee squarely falls within the ambit of the terms (management and business of the society). It would be pertinent to mention that Section 55 of the M.P. Societies Act is couched in much wider terms than Section 72 of the H.P. Act and specifically provides that where a dispute regarding terms of employment, working conditions and disciplinary action taken by a society arises between a society and its employees, the same shall be decided by the Registrar or other officers appointed by him which decision shall be

final. In that case the employee after his services were terminated sought a reference under Section 55 and after the decision in the reference had been made, he approached the labour court. It was in these circumstances that the court held that the labour court had no jurisdiction to decide this dispute which had already been decided and the reference itself was bad in law. In our considered view this judgment has no application to the facts and circumstances of the case since in the present case the employee straightaway approached the labour court and did not approach any authority under the Co operative Societies Act.

In fact this question is no longer res integra. A Bench of the Apex Court in **Morinda Co operative Sugar Mills Ltd. Vs. Morinda Co operative Sugar Mills Workers' Union (2006) 6 SCC 80** has dealt with virtually an identical question in relation to the Punjab Cooperative Societies Act. Section 55 of the said Act is virtually identical to section 72 of the H.P. Cooperative Societies Act. Placing reliance on the earlier judgment in Cooperative Central Bank Ltd. case supra, the apex court held that the word business has to be equated with the actual trading in commerce and other business activity

and that a dispute relating to the services conditions of the workman employed by the society cannot be held to be disputed touching the business of the society.

Keeping in view the aforesaid law, we are of the considered view that the Industrial Tribunal had the authority, power and jurisdiction to entertain and decide the reference made to it. The question raised by the workmen was that their services had been terminated without following the provisions of Section 25-F of the I.D. Act. The workmen complained of violation of the protection granted to them under Chapter 5-A of the I.D. Act. The apex court has clearly held that this is a matter which can only be decided by the tribunals constituted under the I.D. Act. In view of the law laid down by the apex court, in our considered opinion, the contention of the learned counsel for the petitioner cannot be accepted. We are of the considered view that the learned tribunal had the power and authority to decide reference made to it.

The petitioner society has failed to point out any infirmity in the order of the learned tribunal. Admittedly all the workmen had served more than 240 days. Their services were terminated without giving them

retrenchment notice or compensation as provided under the Act. Their termination being per se illegal, the order of the learned tribunal directing their reinstatement alongwith back wages to the extent of 50% is legal and valid.

The writ petitions are dismissed. No order as to costs.

(Deepak Gupta), J.

April 9, 2007(K) (Surinder Singh), J.